

**Town of Milford
Zoning Board of Adjustment Minutes
March 5, 2015
Case #2014-20
San-Ken Homes, Inc.
Special Exception**

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice Chair
Michael Thornton
Joan Dargie
Len Harten, Alternate

Absent: Laura Horning
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant, San-Ken Homes, Inc., owner of Map 40, Lot 104-4 and Map 45 Lot 3, 17 & 18 located on Mile Slip, Wolfer & Boynton Hill Roads located in the in the Residence R district, is requesting a Special Exception from Article VI, Section 602.6:A to allow a total of 6,400 square feet of wetlands impact and 25,700 square feet of wetlands buffer impact associated with road construction.

Minutes Approved on April 16, 2015

Zach Tripp, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board and introduced the Board. He read the notice of hearing into the record and stated that this case had been tabled from previous meetings. He stated that when the case was left off they had closed the public comment portion of the meeting. He had two letters to read into the record, and the applicant would read his case into the record. He asked Chad Branon of Fieldstone Land Consultants, representing San-Ken Homes, to give his presentation.

C. Branon said they were requesting a special exception totaling 6400 SF of wetland impact and 25,700 SF of wetlands buffer impact associated with roadway and storm water management construction. The property totals about 174 acres on Boynton Hill Rd, Mile Slip Rd and the Class 6 portion of Wolfer Rd. It is mainly wooded with some wood road traversing the property and jurisdictional wetlands. Topography generally slopes west to east with the high point on proposed Lot 32. It is abutted by existing conservation land on western and northern property line. Proposal is to subdivide into 54

residential lots. Local regulations and Planning Board said it could support up to 61, but his client chose to hold it to 54 since it creates valuable parcels and good balance between development and land conservation. Proposal exceeds five lot thresholds and is required to follow the Milford Open Space and Conservation District Ordinance – one of the reasons for presenting an open space plan. Required is 40 percent, or 69.6 acres with 50 percent, or 34.8 acres, consisting of acceptable land. Proposal provides 75.7 acres of open space which is 43.5 percent, exceeding the minimum. No minimum lot size is open space. Minimum frontage is 50 ft, ranging from 1.1 to 1.2 acres with 100-150 ft. frontage. There will be onsite wells and access roadway. Boynton will be extended approximately 4900 linear ft. and spur road approx. 1,000 ft. Roads are designed to minimize wetland and buffer impact. All designs will meet local, state and federal guidelines. Project will require approval from State DES through Alteration of Terrain, Wetland Bureau, and State subdivision approval. They have worked with the town – meetings with Conservation Commission, did a site walk with the Conservation Commission and Planning Board and working through five review letters from Conservation Commission. They have been before the Planning Board for conceptual, design review and final review. Plan is currently under technical review by third party engineering consultant. Planning Board confirmed and voted on density. Overall feedback from Town has been positive. He referred to the plan, the proposed areas of impact is 7 wetland crossings and associated wetland buffer impact. From left to right on the plan, Wetland A is 500 SF wetland disturbances and 1500 SF buffer disturbance. It is currently disturbed by a timber bridge crossing it. Timber Bridge would be removed and replaced by concrete structure. The inlet side has a plunge pool that has been over excavated and has standing water. Next wetland impact is B, where they are proposing a common driveway to minimize land disturbance and associated wetland and buffer impacts to access two isolated upland wetland buildable areas. B is 700 SF wetland impact and 1550 SF buffer impact. They would be proposing a drainage culvert in that location. Crossing C is 900 SF wetland impact and 1350 SF buffer impact. There is an existing wood road and existing 24 inch reinforced concrete culvert. It is wetland area that has already been crossed. They are proposing to improve it. A 24 inch culvert is undersized, which is visible during a site walk. Needs to be installed adequately and enlarged as part of the project. Next wetland crossing is D, a small seasonal runoff currently impacted as seen in the photo, a wood road goes through. They tried to locate the proposed road to follow topography as much as possible and minimize overall impact for the buffer and associated wetlands. Crossing D is 1300 SF wetland impact and 4200 SF buffer impacts. The reason for increase over previous ones discussed is they are roadway impacts vs. driveway impacts so it is much wider to meet town design standards for road drainage. They are quite dry and seasonal. Most, except for crossings A and G, are all seasonal runoff and dry most of the year. Crossings E & F at about Station 4,000 there is another seasonal runoff that has been impacted in the past. Wetland E is 500 SF wetland and 4700 SF buffer impact. Wetland F is 700 SF wetland impact and 3300 SF buffer impact. They are following contour of the land, cutting a bit on the uphill side and filling in on the downhill side, reducing impact. Crossing G jurisdictional wetland that transects the property and there is no way to avoid crossing it. Wetland area is 1800 SF wetland impact and 3800 SF buffer impact. It is more a defined channel with water present year-round. It was previously approved as part of Boynton Hill subdivision. They are seeking approval because the State has a four year time frame on their wetland permits. There are two existing lots of record on back side of the crossing. This wetland would have to be crossed to access back lots. They included it because that permit has lapsed. They don't believe it is part of their impact. There is existing town right of way. His clients have no ability to adjust alignment of the roadway there. Impacts they are proposing on their site are 4600 SF wetlands and 21,900 SF buffer impacts. All wetland an area, except for previously permitted one, the only wetland not already impacted is the 700 SF proposed to access Lot 51 (zoning board plans lot 49). In summarily, the development meets all local regulations. They have not and will not be seeking any waivers or variances. They believe it is a balance between development and land conservation. They are not maximizing the density. He offered to answer questions from the Board or respond to the Conservation Commission letter.

Z. Tripp said they would start with questions from the Board.

F. Seagroves questioned that the total impact was stated as 25,900 SF while the application said 25,700.

C. Branon said he was referring to, if you take out the buffer and wetland impact associated, it goes to 21,700 buffer impact to 21,900. It wasn't considered part of the project.

J. Dargie stated could they build up to 60 lots.

C. Branon said they approved density to 61.

J. Dargie asked about swapping Lot 21 and 22 to avoid that wetland buffer crossing and put lots someplace else.

C. Branon said when approving density it is conventional style, not open space style. Goal is to have marketable lots. If you increase density you decrease open space. Crossing A has already been impacted and they are utilizing an existing crossing. B is a seasonal runoff and they want to cross to access buildable area. It is a very nice area with views. It is 174 acres and they are proposing impacting 6400 SF. NH Fish & Game has reviewed it and said it was a reasonable proposal with recommendations in changing drainage structures to reinforced concrete pipe because that retains moisture and is friendlier to wetland species. They are adhering to those recommendations.

J. Dargie asked if they could do the project without those two lots.

C. Branon said no. They have to place lots along the road frontage and all lots have approx. 100 to 150 frontages to have just over an acre of land. They can't do it without putting in another road, with increased wetland and buffer impact.

J. Dargie asked if they drop those two lots, the plan wouldn't be cost effective or profitable.

C. Branon said with 4900 ft of road, fire system, drainage improvements, infrastructure, risk, etc. They are under time constraints and 54 lots are reasonable. They could have proposed 61 and then negotiated to 54.

Z. Tripp said at the last meeting it was mentioned the next step was engineering analysis of proposed runoff. Is that available now?

C. Branon said it was done and has been sent to CEI third party review. It will be reviewed by DES and it is in review; was designed to meet local and state regulations.

Z. Tripp asked when the town would see, approve and if it was required by the Planning Board.

C. Branon said it is; typically they would not have provided it at this point but because of the time frame they had to keep going forward in order to have a marketable product this year.

Z. Tripp's concern was A, B & C areas of higher slope. Does analysis take into account change from forested, leaf covered floor to a paved drive?

C. Branon said it is very comprehensive. We analyze all pervious surfaces for changes. Project has gone through more extensive review per local environmental coordinator, Mr. Elkind. They have proved and graded out. They modeled all the lots with driveways, house, associated grading, land impact, etc. They are not allowed to have an increase in runoff to meet town and state ordinances. They have designed to have net zero impact on the peak grade of runoff. He pointed out infiltration basins in the crossing areas. They are capturing and treating all storm water runoff to match existing rate when everything was forested.

Z. Tripp asked how water in A & B got from a paved drive down to one of those basins.

C. Branon said with two lots they are mitigating runoff from a treatment standpoint – sheet flow and erosion control and then discharged into the wetland. They flow right into the wetland. They are offsetting it by capturing; the whole watershed is basically the entire hill. Anything coming down is into the wetland. They are holding and capturing those areas to offset the runoff so it will be a net flow negative – actually less. The hardest storms to design for are the smaller storms. You have to have small meters devices, sometimes by infiltration or an outlet structure with a screen. That is size for the floor of the basin. The depth of the basin is determined for larger storms. They will meet all storm water management criteria. They won't get Planning Board approval otherwise.

Z. Tripp said in his opinion those two lots are unique, being on the slope.

C. Branon said slope is not that bad.

Z. Tripp asked about drainage for the main road. – A ditch by the road or storm drains that you divert water to?

C. Branon it is all an open drainage system. If there isn't a roadside ditch the topography conveys the storm water to an interceptor trench behind the lot.

Z. Tripp asked about water running of the crown of the road in crossing D.

C. Branon said in D they were in a fill. Storm water off the road will sheet flow into the grass swale and ultimately into the wetland area, around the wetland area. There are a number of roadside ditches. There is a swale on the uphill to capture surface runoff and running it down to infiltration basins. There is a localized area that would go into the wetland.

Z. Tripp asked if it was off the road through the vegetation to get down to the wetland area.

C. Branon said that was correct. It meets all guidelines by the state. State would like to disconnect impervious areas as much as possible, meaning sheet flow through vegetation.

J. Dargie asked if there would be a storm water basin on Mile Slip Road where storm water comes out onto Mile Slip Road.

C. Branon said there is a low point. The road comes off Mile Slip to a low point and then up. That will discharge into the storm water basin. The discharge goes under Mile Slip to an existing culvert which will likely be upgraded. That is currently being reviewed by DPW.

Z. Tripp asked for any further questions from the Board. There were none. He suggested reading the letters received into the record and having C. Branon to address anything in the Conservation Commission letter as he read the application into the record. He read into the record letters as follows: 1. From Suzanne Fournier dated 12-5-14; 2. An e-mail dated 1-26-15 addressed to the ZBA c/o Bill Parker, with a letter attached dated 1-6-15; 3. Letter from NH Fish & Game; 4. Letter from Milford Conservation Commission dated 2-20-15.

Z. Tripp then asked C. Branon to read the application into the record and make any additional comments in response to the letters.

C. Branon wanted to address the S. Fournier comment and then the Conservation Commission letter separately. A lot of information will be the same as in the application. Re S. Fournier comment re storm water management, she claimed infrastructure will cost the town. That does not relate to this ZBA meeting, which is strictly wetland and buffer impacts. NH Fish & Game comment is actually an e-mail sent in response to the 12/14 meeting. At that meeting he explained that when they submit the wetlands permit it ultimately goes to NH Fish & Game and that is when they would handle the Heritage Bureau. In getting feedback from ZBA they tried to get answers from the Board toward getting application to a successful conclusion. They submitted all data to Fish & Game and 6-7 e-mails back and forth. He did bring a copy of that e-mail. Review by Fish & Game was quite favorable. Typically with wetland impact if they feel proposal is too intense; Fish & Game will ask for mitigation which was not mentioned in the letter. They reported that 6400 SF of wetland impact in their review of application would probably not hit the radar. They felt this was good balance between land conservation and development. Applicants will adhere to their recommendations; it will be a condition of state permitting that will be enforced by state. Re Conservation Commission letter he wanted to share concerns and frustrations that have been taken re what has been construed as continuous review process and gone through with Conservation Commission. In consulting with clients' attorney, it doesn't appear to follow local zoning regulations and ordinance. H's been asked to read that into the record. They spent seven months working with the town. Most has been positive and productive. They met with Planning Board and Conservation Commission on several occasions. Actively working through review letters from Conservation Commission Members, attended Planning and Zoning Board meetings and voiced concerns. There have been conflicting goals among the boards. Proposal meets local regulations. They were in December and ZBA meetings were missed and then a letter was issued by Conservation Commission on 2/1. He received it 2/9, three days before the 2/12 scheduled ZBA meeting. That was

surprising and at that time they involved the clients' attorney in review. Goal was to work with community, Conservation Commission and all boards. They decided to go back to Conservation Commission to resolve concerns. Upon review of the ordinance it doesn't appear to follow section 6.02.6.D that states the Board of Adjustment may grant a special exception after the application has been reviewed and reported on by the Milford Conservation Commission and forwarded to the Board of Adjustment within 40 days of a public meeting, at which time the Conservation Commission first received details of the project. They were before the Commission on November 13 with plan which followed site walk. Plans are before the Board. This would put the 2/1 letter far outside the 40 days. The Conservation Commission letter for the Dec. 4 meeting was positive and ended with the Commission saying they felt the crossing were the least impact to allow developer to utilize the property. They feel that letter had value. It was part of a lot of work and planning. In the interest of working with everybody, they went back before the Conservation Commission on 2/19. Today they received that 2/19 letter and had opportunity to review it. He would address it.

Z. Tripp said he was reminded that in the last meeting that was tabled, he didn't read the Conservation Commission letter into the record. He could do it now or wait until applicant addressed the latest letter.

C. Branon agreed to have the 12/1 letter read into the record, which was done by Z. Tripp.

C. Branon said re the Conservation Commission letter #1, they are addressing some special exception criteria - need for the proposed project. They said the applicant needed to cross the wetlands. Project impacts are needed in order to enjoy and utilize access to the portion of upland area. Re house lot impact, one of them exists and both of them are required to access isolated areas. Landowners have a right to access their property, 1200 SF is a minor impact.

Z. Tripp said it was 6400 SF of wetland.

C. Branon said they were referring to Lots 51 and 52, stating they have significant wetlands and need crossing for driveways. He read from paragraph 2 of No. 1 on the Conservation Commission letter.

It is not just to access individual lots but to access isolated acreage of the property. Area referred to they are requesting to upgrade an existing wetland crossing. It has already been disturbed.

Z. Tripp said reference was to 51 and 52. Were they 21 and 22 on the plan the Board had?

C. Branon said as part of review and planning process the lots were renumbered. He pointed out the current 50 and 51. Wetland A is existing timber bridge. It is already disturbed and bridge needs repair.

Wetland B is 700 SF to get to the area of developable land. They think it is important to understand that owners have a right to access their land. First crossing is where Timber Bridge is. Important to understand they are proposing common driveway in that location to minimize land disturbance, buffer impact and access this buildable area as efficiently and responsibly as possible. His experience is when evaluating need you evaluate the whole project. 174 acres and disturbance is less than ½ percent of whole land area. This is an environmentally responsible design. Next comment is 51 and 52 require wetlands "while developer places driveways to minimize impact, development of these lots increased impact to the whole project." They are acknowledging effort to minimize impact. Applicants want to minimize impact in order to access buildable areas of land. The second part of that comment re G, recommending it be 48 inch reinforced concrete pipe. That is what applicants propose. Re #3, impact on plants and wildlife, the comment appears to be less associated with the buffer and wetlands. It is a general comment on the project due to its location. He has worked on a lot of properties in Southern NH and everyone is on Fish & Game action plan; if it has a certain contiguous acres it is on their plan and plan doesn't address details of every project. It targets large tracts. Important they reached out to Fish & Game. If anyone would comment, it would be Fish & Game. He quoted from the Criteria for Evaluation in the application Applicants believe "the proposed crossings have been designed to minimize wetland and buffer impact to the best extent possible" and the fact the proposed crossings have been situated to cross in areas that have already been disturbed, the wetland and buffer impact on this project should have negligible impact on the fish and wildlife. "The vegetation in the area is dominated by mature hardwood. However a majority of the property has undergone timber harvest

within the last five years. The wetland areas are forested and seasonal in nature," except for A & G which have runoff year round "and therefore do not provide for significant functions and values. Due to the large tract of open space and adjacent parcels of forested land the proposed development is unlikely to have any adverse effect on the wildlife in the area. Many large mammals such as deer also thrive on "edge" habitat that is created at the interface of forested land and open yards and storm water treatment areas. The plants and wildlife within the buffer area are common in southern NH. A review by the New Hampshire Natural Heritage Bureau identified two species of concern in the general area (Wood turtle, Blanding's turtle) but there were no recorded occurrences for rare species nor exemplary natural communities mapped on the project site and none have been observed on site." At the 12/4 ZBA meeting there was concern about the NHB documentation so they reached Ms. Tuttle at Fish & Game and explained her feedback was important at that time. They look at the entire project, not just the buffer areas. They determined this project would not have direct impact on species listed. Fish & Game recommendations were read into the record. Applicants will abide by them; it will be part of the permit process. Fish & Game is usually the most difficult entity in the process; they felt it was a good balance between development and conservation. Applicants believe this is supported looking at the individual crossing areas. All have already been impacted except for 700 SF and the 1800 SF already permitted and needed for access off Boynton Hill Rd. It meets regulations. If not, they will be required to do so. Re #4, impact to quantity and/or quality of surface and ground water –they stated the project will go through extensive review. They are going through third party review by town consultant. It has been reviewed by staff and will be by State Alteration of Terrain Bureau. The standards are to protect and safeguard against degradation of ground water. They have to secure permit from agencies that safeguard this concerns. Feels there is no basis to this comment in the letter. Alteration of Terrain permit requires certification through the 401 Clean Water Act. The purpose of reviews and standards is to protect the concerns raised in this section. Applicants feel this plan will not have a negative impact. Re #5, the potential to cause or increase flooding, erosion, or sedimentation, nothing against the comment, "The engineers have assured the Town that they have used the very latest storm water models to predict runoff quantity and speed." That is a fair and accurate statement. #6, "If the amount of impact on this site and specifically on lots 51 and 52 were allowed on abutting properties, the cumulative impact would be very significant." C. Branon said that he was focusing on two impacts. Land is 174 acres. There is no attention given to the 76 acres of open space or that a good portion of the lots will be developed on 1/3 of the lot 2/3 will be undeveloped. It is applicants' opinion that evaluation should consider the total impact in relation to the total project area. It is designed to standards set to safeguard and protect against degradation of surface, ground water and water quality. He doesn't believe statement has a lot of basis because it doesn't evaluate the whole project. They reviewed it at the Conservation Commission meeting. One of the crossings already exists, so really 700 SF of impact. Every case has to be taken independently. They were before board before for projects with more impact in the same watershed and this concern didn't exist. If you assume all properties are 174 acres and have to go through same standards, etc. he thinks surrounding areas and adjacent wetlands will be in good shape.

Z. Tripp asked the amount of wetlands on the whole lot and what percentage the 5400 is.

C Branon didn't have that but pointed to the light green areas on the map as being the wetlands. They tried to put as much wetlands as possible in open space. He continued, re #7 in the letter, re impact of the proposed project on the values and functions of the total wetland or wetland complex. The site is 54 lots open space development and only proposing 6,400 SF of wetland impact and 25,700 SF buffer impact. Crossing A is existing impact, B is new 700 SF impact, C is existing, D-F are existing or impacted in the past. G is the crossing previously approved. They think they have done a good job in layout. Proposing to impact already impacted. It could be impacting areas that are not disturbed. He feels not a lot of credit was given to minimizing impact. Wetlands on site are all seasonal except G and A is marginal. Re #7 open space, they believe impacts are small relative to size. They are required to put 69.7

acres in open space. Proposal puts six more in open space. They could have been put into the lots – shows a sensitivity to conserve. Could have had 70 acres and met requirements. Project uses best management practices. State criteria are based on that, structural, non-structural, grass swales, retention basins, erosion control. All of that is reviewed and will be part of final planning. That is very good comment and by default because they are going through the State permitting process. He said that covered the letter, and in going through the application, will probably find it covers most of that as well.

Z. Tripp asked him to read through the application.

C. Branon read the application into the record as follows [additional comments in brackets].

Description of proposed use:

1. The proposed use shall be similar to those permitted in the district:

The proposed use is an open space residential subdivision designed in accordance with Town regulations and is similar to the existing and permitted uses in the district. The wetland crossing off Boynton Hill road has been previously permitted (NHDES FILE #2002-00537) and is required to access two approved lots of record from the previous Boynton Hill Subdivision. This request is for a proposed road to be constructed between Mile Slip Road. This project will consist of extending Boynton Hill Road through the project parcel to Road to Mile Slip Road. This lot is located within the Resident “R” District of the Town of Milford Zoning Ordinance. The proposed use is permitted and similar to others in the District. The location of a proposed road has been best situated to minimize wetland impacts and associated buffer impacts. The roadway has been located and designed to follow the existing topography to the extent possible which thereby minimizes the required grading and footprint of disturbance.

2. The specific site is an appropriate location for the proposed use because:

The proposed wetland crossings are at the narrowest feasible points and are required due to the fact that the wetland areas transect the lot near access roads and crossing is necessary to access the majority [developable] of the upland area or the parcel. The existing lot is 184.6 acres in size with the developed portions located through the central area of the site. The proposed lots will be surrounded by a significant open space parcel which will provide permanent buffering to the adjacent areas. The amount of wetland impact is minimum given the size of the parcel and length of [propose] roadway. Also the wetland crossings have been situated to utilize existing logging road crossings and [woodland crossings] disturbed areas, thereby reducing the amount of impact to the wetland and buffer areas.

3. The use as developed will not adversely affect the adjacent area because:

The proposed road will incorporate erosion control measures, drainage improvements and will stabilize disturbed soils until vegetation is reestablished and will not adversely affect the adjacent area. The project will employ all best management practices during construction to prevent any potential impacts. The storm water management system has been designed to mitigate the proposed improvements to the property, also preventing impacts to the adjacent area. In summary this project will not have adverse impacts, as it will meet all local and state requirements and will provide safe and environmentally responsible access to the property. The use as developed will also not adversely affect the adjacent area because all best management practices for construction of the proposed road will provide access to the property with has been designed to minimize any erosion during construction and in the future as well as provide safe environmentally responsible access to the property. Also the development is centrally located with over 75 acres of open space surrounding the developed area which will act as a vegetated and aesthetic buffer between existing and proposed dwellings.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

The proposed road will meet all local road construction regulations and safety requirements by providing safe site distance, travel surface, side slopes and access for emergency vehicles. The

roadway and proposed development will also comply with all local storm water and state AOT requirements. The use will be that of residential access to single family dwellings which is similar to other uses along Boynton Hill and Mile Slip Road. The proposed roadway will also create a second access/egress route from Mile Slip Road which is a long dead end roadway and will improve safety and access for emergency vehicles [along that stretch]. The proposed access road will not create any nuisance or serious hazard to vehicles or pedestrians.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

The proposed road design will meet all local regulations and standard engineering practices. The design will provide for safe vehicular access to and from the property. The design implements best management practices and the property will be serviced by on-site septic systems and wells. This proposal therefore provides adequate and appropriate facilities for the proposed use.

6.02.7. Criteria for Evaluation:

1. The need for the proposed project. The subject parcel is a large tract of land with wetland areas which transect the property near Boynton Hill Road; [in this location] there are two existing lots of record which require access which was previously approved access and permitted in 2002 (2002-00537) [through the NH Wetlands Bureau as well as locally through the Milford Conservation and Zoning boards.] This crossing will remain in the same location but has been redesigned to meet current standards. The additional wetlands which need to be crossed are seasonal and temporary and located along the proposed roadway which is designed to comply with Town and State [or already impacted with existing crossings, with the exception of the 700 SF mentioned. The wetland systems throughout Milford are afforded the additional protection of a 25 ft. wetland buffer. However, the crossing of wetlands in order to access one's property and to construct storm water management is an established right which is allowed and a permitted use supported by the State of NH Wetlands Bureau as well as the Town of Milford regulations – permitted through obtaining a special exception. The proposed impacts associated with this project are needed in order to enjoy, use and access a significant portion of the upland areas contained within the parcel boundaries. There is also a need for this project as this project will supply housing for the local community and surrounding areas, roadway requirements. The proposed project is typical and permitted use in order to allow landowners access to the upland portions of their property. Wetland and buffer impact is required to access the lots and the wetland crossings are a permitted use with additional review of the Conservation Commission and ZBA in order to verify that the proposed project is reasonable and in keeping with similar projects approved throughout the district and to verify that the evaluation criteria has been considered in the design.

2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers. The proposed road location is located within the narrowest feasible part of the wetland in order to minimize wetland and buffer disturbance area and still provide safe and reasonable access in accordance with Town of Milford road construction requirements. The proposed road also has been oriented to enter and exit the wetland buffers as soon as possible through the [proposed] wetlands crossing areas. [In summary, the development of the 174+ acres associated with this project will result in impacts of 6,400 SF of wetland area and 25,700 SF of wetland buffers. We believe this is a small impact considering the size of the project, especially since this proposal will place nearly 76 acres of land in open space.] The proposed open space will also provide permanent protection to wetland and buffer areas encompassed within.

3. The impact on plants, fish and wildlife. Since the proposed crossings have been designed to minimize the wetland and buffer impact to the best extent possible and the fact that the

proposed crossings are also situated to cross in areas that have already been impacted and disturbed, the wetland crossings in this project should have negligible impact on plants, fish and wildlife. The vegetation in the area is dominated by mature woods. However, the majority of the parcel has undergone a timber harvest within the last five years. The wetland areas are forested and seasonal in nature and therefore do not provide for significant functions and values. Due to the large tract of open space and adjacent parcels of forested land the proposed development is unlikely to have any adverse effect on wildlife in the area. Many large mammals such as deer also thrive on "edge" habitat that is created at the interface of forested land and open yards and storm water treatment areas. The plants and wildlife within the buffer area are common to southern NH. A review by the New Hampshire Natural Heritage Bureau identified two species of concern in the general area (Wood turtle, Blanding's turtle) but there were no recorded occurrences for rare species or exemplary natural communities mapped on the project and none have been observed on site. We have spent a great deal of time on site and also performed a site walk with the Conservation Commission and Planning Board. There has been a lot of activity on the property, including recent logging and so on, and there have been no observations of exemplary species on the property. At our meeting with the ZBA on Dec. 4, there was some concern raised as to the NH Heritage Bureau documentation, so we extended out to Ms. Tuttle from Fish & Game and explained that her feedback would be helpful at this stage even though we have not been to state permitting. She agreed to review the project and we submitted all the documentation to her and provided her with answers to any questions she had. Fish & Game looked at the entire project, not just for wetland crossings and they determined they do not expect that this project will have direct impact on the species listed. They did make recommendations and they will have the opportunity to review the project once again when we submit to the state wetlands permit. The fact is Fish & Game felt this proposal is a fair balance between development and land conservation. They are typically the most difficult entity in the permitting process. Based on this, we are confident that our design will have negligible impact on plants, fish and wildlife. We believe this is supported if you study the individual crossing areas, as most of them have already been impacted. As I explained on Dec. 4 we would have had to address their concerns and certainly will again if they have any as we go through the permitting process. As such we will be following Ms. Tuttle's recommendations, one of which consists of modifying all the drainage structures to reinforced concrete pipe and providing documentation to the contractors on site. Again, Fish & Game looks at the entire project, not just the wetland crossings. They have determined that they do not expect this project will have direct impact on the species listed. For this application before the Zoning Board we are before you seeking a special exception strictly for the wetland and buffer impacts. We are looking at a much smaller area than Fish & Game that is more assuring that this project will have negligible impacts on the plants, fish and wildlife.

4. The impact on the quantity and/or quality of surface and ground water. The proposed road will be constructed in accordance with the Town design regulations, Storm Water Management and Erosion Control Ordinance, as well as NHDES Alteration of Terrain regulations and standard best management practices. The proposed road construction will not adversely affect the quantity or quality of surface and/or groundwater [as this is not allowed in any of these regulations]. The required grading will not redirect the flow of runoff or storm water to any other area than where it currently drains we are not manipulating any of the large watershed. Everything will still drain to the wetland area and discharge locally on site. The proposed project will maintain slopes and vegetation along the slopes of the roadway area which serves to decrease the energy of any storm water [and treat the runoff prior to discharging into the adjacent jurisdictional wetland areas in the areas that are locus to the wetland] thus allowing for infiltration into the soil thereby reducing erosion potential. The temporarily disturbed area

during construction will be isolated by properly installed silt fence and will be seeded, and stabilized with straw or jute matting until vegetation can be established.

5. The potential to cause or increase flooding, erosion, or sedimentation. The proposed road and the remainder of the lot are not within the 100 year flood zone. The subdivision will be designed in accordance with Local Storm Water Management Regulations [locally and on the state level, therefore will not pose any additional risk for flooding or erosion, sedimentation. All the parameters will meet those standards.

6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights. Every case would need to be taken on an individual basis and evaluated on the individual conditions and merits through the Conservation Commission and Zoning Board of Adjustment. The subject property is surrounded by forested areas, and residential development. Assuming that all abutting properties are designed in accordance with Local and State requirements [are designed to minimize permanent impacts, provide for mitigation and adequate open space conservation] there should be no significant impact to property or community as a whole. Portions of the abutting properties are already developed and should the remaining abutting properties also be permitted alterations, the cumulative impact should be negligible, and would not adversely affect the wetland functions and values of the existing wetland system. The proposal meets all mitigation requirements – it exceeds them. We are proposing to place over 75 acres in permanently protected open space which exceeds local regulations by over six acres. When you compare the 6400 SF wetland impacts and 25,700 SF of buffer impacts, the total impacts consist of less than ½ percent, about .4 percent of the land area. If all other properties were developed to this extent with mitigation for storm water it is our opinion there would be no negative impact to the neighboring properties or wetland complex.

7. The impact of the proposed project on the values and functions of the total wetland or wetland complex. The subject parcel has been harvested by humans in the past for farming and timber harvest activities. The land use and land cover has changed over the years and this proposed change will be designed to maintain much of the existing conditions within the wetlands and the open space around the development. Although a residential subdivision is being proposed, it will be in compliance with the open space style of development. The open space concept strives to minimize wetland and environmental impacts and conserves large tracts of land adjacent to the undeveloped parcels in order to provide maximum wildlife habitat benefit while still providing reasonable use of the land. The wetlands and buffer Impacts for this project are, in our opinion, quite small considering the size of the property and the proposed project. Also, the amount and type of wetlands being crossed in the proposed development, seasonal runoffs and forested wetlands, - many of which have already been impacted - provide very little functions and values in this situation as far as the overall wetlands are concerned. since the impacts are limited to very small and narrow crossings which serve primarily in transferring spring runoff but do not provide year round habitat for aquatic or land-based species. The proposed crossings are situated in areas that are already impacted.] Due to the small amount and minor nature of the wetland impacts, the proposed project as designed will have no significant impact to the functions and values of the total wetland complex.

Z. Tripp moved on to discussion of the case, starting with the criteria for the special exception for wetland impact, reading from Article VI, Section 6.02.7. He reminded the Board they were just evaluating the 6400 SF of wetland and the 25,700 buffer.

1. The need for the proposed project.

M. Thornton – There is a need. There is a housing shortage.

J. Dargie – asked if the question was need for the project or for the buffer impact.

Z. Tripp said it was need for the impact.

J. Dargie said the need for impacting that much of the land – no. Less of the wetland could be impacted and still create the project. Her main concern is general area of C & D. She went on record that she is not using Conservation Commission's last letter. Applicant thought initial letter was in favor. It said the wetlands on the property are high, lack of runoff on this property is an indicator of good drainage, and reducing amount of pervious surface could have a detrimental effect. So they are saying altering that could be detrimental, and they are asking for a culvert. With that, she would say no.

F. Seagroves – yes, special exception is needed so they can gain access to the building lots.

L. Harten – There is a need for the project.

Z. Tripp – agreed with majority there is a need for the project. Majority of the buffer and wetland impact is result of the road to access. The road is needed for the subdivision which is valid use of the lot. There are three entrances/driveways for three proposed lots. There is a need to impact wetland and buffers on those lots.

2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers.

F. Seagroves – yes, although there is concern re lots 21 and 22. This is a big parcel. They could have put 64 lots but are only putting 52. They are making minor impact on the wetland as they can. To make this project worthwhile they need 52 lots. There has been a lot of thought to do it with less impact.

L. Harten – agreed, seems the developer and engineers have done their homework and the proposed plan probably, to the best of his interpretation, would have least impact on wetlands and surface water and associated buffers.

J. Dargie – no, the least impact would be eliminating impacts A & B on Lots 21 and 22.

M. Thornton – yes, agreed with Joan that the strongest weakness in the plan is the A & B area, Lots 21 and 22. Going with the Conservation Commission, he would say most care be taken in that area.

Z. Tripp – yes, applicant demonstrated the proposed road is a proposal with least impact to wetlands and the buffer. They are using pre-existing logging road, following the slope and contour of the land. A & B are crossing at already altered crossings, so if you were to cross those are areas with the least impact.

3. The impact on plants, fish and wildlife.

M. Thornton – they have done a good job. The report from Conservation Commission and applicant, they have walked it a number of times and have not seen a preponderance of wildlife they are concerned with. There is a lot of care taken to avoid impact on wildlife.

J. Dargie – thinks the plan takes into consideration fish and wildlife quite well.

F. Seagroves – yes, likes the 13.62 acres of open space for wildlife. These turtles, etc. will probably migrate to that area where food will be. With all this open space they have taken good consideration.

L. Harten – agreed, they have had conversation with Fish & Game and as Fletcher mentioned, there is significant amount of open space available. It would have least impact on plants, fish and wildlife in the area. They also indicated there are no endangered species that were seen in the walkthrough. They could be there, but haven't been observed. He doesn't think that is an issue.

Z. Tripp – per the 12/31 Conservation Commission letter, he does not believe wetlands and buffer impacts will impact the horn nosed snake, if present, any more than the rest of the subdivision. Applicant testified they will use reinforced concrete pipe.

4. The impact on the quantity and/or quality of surface and ground water.

F. Seagroves – yes, applicant stated this is all going to be reviewed by the state. Board is there is look at impact to the wetland and buffer but take this into consideration. The state will look at it more closely during permitting.

L. Harten – agreed, believes they put a lot of effort and control so quality of surface and/or groundwater would not be overly impacted by disturbance of wetlands and buffer.

M. Thornton – yes, they have taken pains to make size and material of the culverts and drain areas as friendly as possible to the flow of water and wildlife that may migrate through.

J. Dargie – no, concern of runoff in the general area of 21, 22, 19, and 20. Very close to where the road comes in. She is concerned that drainage is going to cause more water to run down and across to the neighbors on Mile Slip Rd.

Z. Tripp – this and next question are very similar. This is pretty difficult to answer. From notes in December, he was concerned with A, B & C areas. From personal experience when you open water on slopes it is very hard to predict impact. He grew up in heavily wooded lot with streams. He saw through the years, without putting in driveways, it made changes. It is hard to determine what impact A & B would have – probably more to surface than ground water. Applicant stated it is under review and that takes into account impervious surface over wetland and buffer areas. Glad to hear reasoning on how water even though increased in A and B, there will be decrease in upland. Indicates thought on how not to increase surface are in A, B & C sections. With engineering analysis under review, assuming that is positive or mitigation will be put in place if not positive, he would say yes.

5. The potential to cause or increase flooding, erosion, or sedimentation.

M. Thornton – yes, they have taken pains to mitigate it by oversizing and the materials and oversizing of culverts and drain areas.

J. Dargie – no, trying to estimate what it will do is difficult. Her experience is with best plans. That is reason for ordinance. There is a reason wetlands don't want to be disturbed. If it could be predicted 100 percent we would not have the ordinance and could let everyone do whatever they want because you would know the engineers in the long run would be controlling.

F. Seagroves – re #4, it will be under review by the state, which looks at it pretty heavily. Re C, they mentioned catching water in upper areas or slowing it down to a more controlled rate than currently.

L. Harten – agreed, according to engineer they will have enough protection in place so there would be no increase in flooding, erosion or sedimentation. Fletcher mentioned the state review, and with their input he didn't feel it would be a problem.

Z. Tripp – as stated, this question is difficult. D through G can confidently there will be no increase in flooding, erosion or sedimentation due to preventive measure they are taking. Re A, B and C, wetlands and buffers are being impacted by driveways over them and outside them and outside the buffer there is covered ground, sticks, logs, etc. There is a culvert there already which is probably not properly sized and potentially making flow worse than it would be naturally. He can see the argument the plan might decrease sedimentation. Engineering analysis process – applicant testified they take that into consideration. They are diverting uphill water and catching it. Plan is taking into consideration to not increase flooding, erosion and sedimentation.

6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights.

F. Seagroves – Difficult to answer. Circumstances would have to be exactly same for individual or abutter as this applicant. They are talking about a number of acres. He doesn't see how they could try to break that down to see how a one-acre abutter would be impacted. He would have to say there will not be problems.

L. Harten – agreed, any abutters wanting to do something similar would have to go through the same hoops and get same approvals. He doesn't believe it would be a problem.

M. Thornton – A similar process for everyone. Should be looking at the same objective data and where not available at best subject data. That is going to mean yes.

J. Dargie – agreed with Mike. It is a tough question. Are you looking at same size project- another abutter with 100 acres; looking at lot by lot. Looking at that lot, there is not another wetland abutting the lots where she sees the issues. She agrees with other members it would not be an issue.

Z. Tripp – this is tricky to answer. Looking at it this lot has certain amount of wetland and associated buffer. A guess is that 10 percent is disturbed. With another large lot they want to do a subdivision on with 10 percent disturbed, and did in a similar manner with pre-existing logging road and crossings in some areas, same engineering analysis, diverted water to similar catch basins, he could probably be convinced the cumulative impact would be minimal if all is equal.

7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.

M. Thornton questioned what this was asking. Z. Tripp read from the criteria. M. Thornton said it will be, or should be, an equal situation. Given equal consideration, that is subjective. He will say yes.

J. Dargie – no, consider the wetland being impacted and seeing A, B & C being major part of total wetland being impacted.

F. Seagroves – yes. Impact on total wetland, would have to look at the location of A – 500 SF, 22 x 22? He doesn't see that as big impact. To complete this project you have to impact some wetlands. Some of the buffers will be impacted; this is not a major deal.

L. Harten – tough to answer. You don't know answer until project is complete and see how everything functions. If it functions the way they indicate it should and/or would, he would have to say yes. He still had questioned whether the total effect of the wetland and wetland complex would be impacted; would hope it would not. At this point it is probably anybody's guess. He would answer yes.

Z. Tripp – agreed it is tough to answer. He can't see into the future; looking at area, G is off Boynton Hill Rd. Road comes right up to it. Putting a culvert in and driveways over it, he doesn't think it would change how water runs through that area to wherever it goes. It is fairly well developed on north side of that area and fairly wooded on southeast side. Going down the road, F, E & D, there is already a logging road. Question is putting in a road with culvert will that impact functions of wetland and wetland complex; probably not. The rest of the lots probably have bigger impact than actual crossing of wetlands. A, B & C are areas of concern. If engineers' analysis says that flow could be mitigated and controlled and not increase flooding, erosion and sedimentation those impacted areas would impact total wetland complex. Lots 50-2-7 and 50-2-6 and 45-17-9 and 45-17-13 are not impacting wetlands or buffers but they have house and driveway next to the downstream area of A. He doesn't see any more impact to the wetland complex that these lots would have. He would vote yes.

Vote on Special Exception Criteria:

1. The proposed is similar to those permitted in the area.

F. Seagroves – yes L. Harten – yes M. Thornton – yes J. Dargie – yes Z. Tripp – yes

2. The specific site is an appropriate location for the proposed use.

M. Thornton – yes

J. Dargie – no, for those lots in area of C & D where wetlands are impacted.

Z. Tripp asked if he could assume for same reasons as in previous.

J. Dargie said yes.

F. Seagroves – It says specific and they are discussing five or six. Overall, yes.

L. Harten – yes

Z. Tripp – yes. He equates it to being similar to proposed alternative of least impact to wetlands, surface waters and buffers. The road was used as a logging road, follows contours of the site, so he would say it is an appropriate location for the proposed use.

3. The use as developed will not adversely affect adjacent area.

F. Seagroves – yes. They are talking about runoff to the abutters and that will be taken care of by state permit.

L. Harten – agreed, because as F. Seagroves mentioned all of the additional input that will be on this project he didn't believe it would be a problem.

M. Thornton – re past and future review, he doesn't see a problem. Yes.

J Dargie – no, because of effect on wetland in A & B and lots 21 and 22. It could potentially adversely affect adjacent area.

Z. Tripp – yes, citing his response to impact on quantity and quality of surface and ground water, he doesn't believe it will increase flooding or sedimentation. He doesn't believe it would adversely affect adjacent area.

4. There will be no nuisance or serious hazard to vehicles or pedestrians.

M. Thornton – yes, doesn't see hazard; nothing being changed except to improve it.

J. Dargie – yes, looks like no nuisance or serious hazard. The road will be up to code.

F. Seagroves – yes, he doesn't see any hazard.

L. Harten – no nuisance created to either vehicles or pedestrians.

Z. Tripp – agreed, no impact for vehicles or pedestrians.

5. Adequate appropriate facilities will be provided for the proposed operation of the proposed use.

F. Seagroves – yes, they will have wells and sewer, etc. It is proper use.

L. Harten – agreed, all engineering that has gone into it, he believes appropriate facilities will be provided.

M. Thornton – facilities are being improved. They have been looked at and will be again. They are already adequate. Yes.

J. Dargie – yes, appropriate facilities will be provided.

Z. Tripp – yes, application shows proper uses for impacted wetlands with culverts, drainage to basins and storm water mitigation. Yes.

VOTE:

Is the exception allowed by the ordinance?

F. Seagroves – yes L. Harten – yes M. Thornton – yes

J. Dargie – no, she felt it didn't meet criteria, so not allowed by ordinance. Are you allowed to request it.

M. Thornton and Z. Tripp said that would be if it is similar to those permitted in the district.

J. Dargie – yes.

2. Are the specific conditions present under which the special exception can be granted?

J. Dargie – no M. Thornton – yes F. Seagroves – yes L. Harten – yes Z. Tripp – yes

Z. Tripp requested a motion to approve.

M. Thornton made a motion.

F. Seagroves seconded.

Final Vote:

M. Thornton – yes F. Seagroves – yes L. Harten – yes J. Dargie – no Z. Tripp – yes

Case #2014-20 was approved by 4 to 1 vote.

Z. Tripp reminded applicant of 30-day appeal period.